



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0035]

Guidance on Development and Implementation of Railroad Capital Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Final Guidance.

SUMMARY: FRA is publishing final guidance on the development and implementation of railroad capital projects that may be funded, in whole or in part, by FRA (“final guidance”). This final guidance follows publication of the proposed guidance (“proposed guidance”) on June 28, 2022.

ADDRESSES: The final guidance is available at <https://www.regulations.gov> under docket number FRA-2022-0035.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. David Valenstein, Office of Railroad Development, at david.valenstein@dot.gov or 202-493-6368; or Mr. Michael Longley, Office of Rail Program Development, at michael.longley@dot.gov or 202-493-6377.

SUPPLEMENTARY INFORMATION:

I. Overview

Over the next five years, the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the “Bipartisan Infrastructure Law”) will provide unprecedented Federal funding for rail improvement projects in America. As a result, FRA has identified the need to establish clear practices and procedures for the development and implementation of railroad capital projects through the issuance of

agency guidance. FRA published a notice of proposed guidance titled Guidance on Development and Implementation of Railroad Capital Projects (87 FR 38451, June 28, 2022) seeking stakeholder feedback on the content and applicability of the proposed guidance. FRA's consideration of comments and associated revisions to the guidance are described in Section II. FRA is now publishing the final guidance.

The final guidance will assist project sponsors in developing effective capital projects and enhance the management of capital projects. The audience of the final guidance includes project sponsors and partners, as well as the wide range of professionals who contribute to the planning, development, and implementation of railroad capital projects. The final guidance: (1) defines the stages in the railroad capital project lifecycle and project development process from inception to operation; (2) describes the project management tools, processes, and documentation that FRA requires when providing grants that fund the development or implementation of a railroad capital project; (3) differentiates between Non-Major projects and Major projects by defining a "Major Project" as a railroad capital project with a Capital Cost Estimate equal to or greater than \$500 million and with at least \$100 million in total Federal assistance.

FRA strongly encourages project sponsors to follow the final guidance when developing, implementing, and managing railroad capital projects. FRA may use the final guidance to inform its grant application reviews and decisions in accordance with a process described in a notice of funding opportunity for the relevant grant program and may require compliance with the guidance as part of grant agreements funding railroad capital projects in accordance with 2 CFR parts 200 and 1201. The practices contained in the guidance draw from FRA's experience and from established programs of other DOT operating administrations that have enhanced the delivery of major highway and transit projects.

FRA is adopting the guidance largely as it was proposed, with changes to the guidance text as discussed in Section II.

II. Discussion of Public Comments

FRA received a total of nine comments on the proposed guidance: eight generally supported the proposed guidance and provided feedback, and one was considered outside of the scope of the proposed guidance. FRA received comments from the following respondents: American Association of State Highway and Transportation Officials (AASHTO); American Public Transportation Association (APTA); National Railroad Passenger Corporation (Amtrak); Association for Innovative Passenger Rail Operations (AIPRO); Brotherhood of Maintenance of Way Employees Division/International Brotherhood of Teamsters (BMWED/IBT); California High-Speed Rail Authority (CHSRA); Front Range Passenger Rail District (comments were intended for Docket # FRA-2022-0031 and are not addressed here); Metropolitan Transportation Authority (MTA); and New Jersey Transit (NJT).

A. Definitions

Several commenters provided feedback on the definitions established in Section II of the proposed guidance, as summarized below.

1. Major Project, Section II(a). The proposed guidance defined “major project” as a railroad capital project with an estimated total project cost equal to, or greater than, \$300 million, and receiving at least \$100 million in Federal assistance. CHSRA, Amtrak, and APTA suggested a change from the \$300 million total project cost threshold to \$500 million for consistency with the Federal Highway Administration (FHWA) definition and the USDOT Mega grant program.¹ Amtrak also suggested amending the cutoff in Federal assistance from \$100 million to \$250 million for Major Projects. FRA agrees

¹ The Mega program supports large, complex projects that are difficult to fund by other means and are likely to generate national or regional economic, mobility, or safety benefits. More information on the Mega program can be found at <https://www.transportation.gov/grants/mega-grant-program>.

there is value in creating consistency with FHWA and Mega program definitions and therefore changed the major project definition threshold from \$300 million to \$500 million in the final guidance. However, the final guidance retains the secondary threshold of \$100 million in Federal assistance as it more closely aligns with the Federal threshold share used by the Federal Transit Administration (FTA).

2. Project Sponsor, Section II(c). APTA recommended that FRA revise the definition of Project Sponsor to allow for joint or multiple sponsors. BMWED recommended adding compliance with FRA grant labor requirements to the definition of project sponsor. FRA made no changes to the definition of project sponsor in the final guidance. The proposed definition is broad enough to accommodate multiple project sponsors and the labor requirements described in BMWED's comment are imposed through existing laws and authorities as well as through the terms and conditions of individual grant agreements.

3. Capital Cost Estimate, Section II(f). APTA recommended including operations and maintenance costs in the capital cost estimate. FRA made no changes to the final guidance in response to this comment. The capital cost estimate is for delivery of the capital project, which typically does not include operations and maintenance costs. However, those costs are accounted for elsewhere in the guidance. For example, the project development stage includes analysis of benefits and costs that would include operations and maintenance costs for the project. In addition, maintenance costs are separately addressed in the project management plan and the financial plan.

4. Financial Plan, Section II(g). The definition of financial plan in the proposed guidance stated that for projects involving debt-based financing, the financial plan identifies the up-front capital for the project. MTA asked for clarification that the financial plan identifies all project funds rather than the up-front capital. In response,

FRA revised the language in the definition in the final guidance to clarify that the financial plan identifies all project funds for the project.

B. Application of the Guidance

APTA, MTA, and CHSRA sought clarification that project sponsors should be able to self-certify compliance with the guidance (for example, self-certify that stages have been completed, documentation prepared, or program requirements have been met). FRA made no changes to the proposed guidance in response to this comment. The final guidance states that FRA will address application of the guidance in grant agreements, including when FRA will permit self-certification. CHSRA also suggested the guidance clarify that it would not apply retroactively to projects that are already in development or subject to a grant agreement. FRA did not make changes the final guidance in response to this comment, since Section I(b) of the guidance states FRA may require compliance with the guidance as part of grant agreements or notice of funding opportunity.

C. Comments on Project Lifecycle

Several commenters provided feedback on the Project Lifecycle Stages in Sections III and IV of the guidance, as summarized below.

1. Lifecycle Stages, Section III. APTA, Amtrak and CHSRA asked for flexibility in combining stages and for clarity about when procurement happens. Amtrak and CHSRA also asked about how innovative delivery methods flow through and change the stages. In response, FRA revised the final guidance to clarify that procurement may be initiated in the project development stage of the lifecycle and specify that Project Sponsors may use innovative contracting and delivery methods.

2. Project Planning, Section IV(b). Amtrak asked to change the language about design in planning and project development to align with their grant process. FRA made clarifying edits to the final guidance in this section but did not make all changes

requested, because FRA will continue to work to align all grants, including those to Amtrak, with this guidance.

3. Final Design, Section IV(d). Amtrak suggested including final design as part of the development stages in the project lifecycle rather than as part of the implementation stages. FRA did not change the final guidance in response to this suggestion. The final guidance is consistent with FRA's approach regarding final design and construction as implementation stages in its grant programs.

4. Operations, Section IV(f). APTA suggested changing the name of the final stage from "Operation" to "Operation and Maintenance." In response, FRA added a reference to maintenance in the description of the operation stage in the final guidance.

D. Comments on Lifecycle Completion Measures

Several commenters provided feedback on the Project Lifecycle Completion Measures in Section IV of the guidance. NJT proposed that the guidance include "commissioning" as a part of construction completion. FRA agrees and revised Section IV(e) of the final guidance to include commissioning as part of construction completion.

Amtrak and CHSRA commented that criteria or processes for determining completion of each lifecycle stage should be added to the guidance. FRA did not add prescriptive criteria or processes that determine the completion of each lifecycle stages in order to provide flexibility for a range of projects.

E. Comments on Project Management Tools

Several commenters provided feedback on the Project Management Tools in Section V of the guidance.

1. Project Management Plan (PMP), Section V(b). Several commenters suggested that the PMP should allow for flexibility to define project budgets. FRA finds that no change is necessary because the final guidance does not specify how Project Sponsors structure budgets, providing the appropriate flexibility. BMWED asked that that

statutorily mandated employee protections be recognized in the PMP. FRA recognizes the importance of these statutorily mandated employee protections but believes they are more appropriately addressed in the context of the grant agreement and are thus outside of the scope of the guidance. However, FRA added a workforce sub-plan element to the PMP for major projects to address railroad labor forces required to implement the project, if applicable.

2. Capital Cost Estimate, Section V(d). NJT, APTA, and MTA commented that the capital cost estimate should use a midpoint of construction instead of year-of-expenditure. FRA agrees and revised the text accordingly. MTA suggested the final guidance specify that the independent party conducting major project risk reviews may be Project Sponsor internal staff independent from the project team. FRA did not incorporate the suggestion to allow Project Sponsor staff to conduct the risk review into the final guidance; FHWA and FTA practice is for independent parties to conduct the risk review for Federally funded projects and the guidance is consistent with this approach. MTA also suggested that FRA oversight of risk review be limited to FRA participation in a workshop led by the Project Sponsor. This approach would also be inconsistent with FHWA and FTA practice of direct Federal agency involvement or leadership of the entire risk review for Federally funded projects. Therefore, FRA did not modify the final guidance in response to this comment.

3. Financial Plan, Section V(e). APTA and MTA sought certainty that documenting the “availability of funding” in the Initial Financial Plan means that all required approvals for funding from governing bodies have been secured, such as an approved capital plan. FRA determined the suggested edits are unnecessary because the guidance addresses availability of funding and associated documentation in Section V(e)(ii)(A)(4), which provides as examples official board resolution or an adopted budget committing the funds to the project, or evidence that the project and funding amounts are

included in the sponsor's adopted multi-year capital program. APTA and MTA also suggested adding internal project sponsor review of the Initial Financial Plan and annual updates that the project sponsor self-certifies. FRA did not modify the final guidance in response to this comment because self-certification measures, if appropriate, would be addressed in the grant agreement.

F. Comments on Project Delivery and Public Private Partnerships

Several commenters provided feedback on the lifecycle progression of project delivery planning and implementation. CHSRA, APTA, and Amtrak sought clarification on when procurement happens and how innovative delivery is recognized in the lifecycle stages. FRA made edits to Section III.a. to recognize sponsor flexibilities, early procurements, and early works.

BMWED commented that the guidance should specify railroad labor organizations as stakeholders in project planning and consider labor from initial construction to established maintenance. FRA made edits to Section V.b by modifying the PMP contents to address labor agreements at Section V.b. BMWED also proposed that the guidance require Project Sponsors to be Railroad Labor Act (RLA) at 45 U.S.C. 151 *et seq.*, Railroad Retirement Act (RRA) at 45 U.S.C. 231 *et seq.*, and Railroad Unemployment Insurance Act (RUIA) 45 U.S.C. 351 *et seq.* compliant and employ railroad employee protections. FRA finds that no change to the guidance is necessary because grant programs address statutory railroad labor requirements.

G. Other Comments

FRA received several miscellaneous comments to enhance the guidance.

1. Amtrak suggested broadening the guidance to address technology integration and other project types. In response, FRA amended the construction stage definition at Section IV(e) and the PMP language at Section V(b).

2. APTA commented that the guidance should address climate resilience. FRA responded by adding resilience consideration to the project planning and project development at Sections IV(b) and (c), respectively.

3. AIPRO, NJT, and APTA commented that effective maintenance should be recognized in early analyses and the operations stage. FRA made several changes to the final guidance to incorporate maintenance. FRA amended the description of the Project Development stage in Section IV(c)(ii)(c) to state that the PMP should include maintenance agreements and made related revisions to the PMP content language at Section V(b)(i). FRA also amended the description of the operations stage to clarify that maintenance of assets is part of operations in Section IV.f.

4. BMWED commented that capital projects that are fully covered by RLA, RRA, and RUIA should be prioritized. FRA finds that no change is necessary because grant programs address statutory labor requirements.

Issued in Washington, D.C.

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